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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,702	10/31/2003	Charles L. Branch	MSDI-186/PC365.07	1925
52196	7590	07/17/2007		
KRIEG DEVAULT LLP ONE INDIANA SQUARE, SUITE 2800 INDIANAPOLIS, IN 46204-2709			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 07/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/698,702

Applicant(s)

BRANCH ET AL.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 217 and 218 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 217, 218 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 217,218 are rejected under 35 U.S.C. 102(b) as being anticipated by Stroeever et al. (5,728,159).

Stroeever et al disclose a spinal implant comprising an elongate bone portion having a longitudinal axis or a system including a pair of spinal implants formed of bone (abstract) including or comprising a first end portion (M) a second bone portion (L) arranged generally opposite the first end portion; a first bone engaging surface (16) and a second bone engaging surface (16) arranged generally opposite the first bone engaging surface; a first sidewall (P) extending between the first and second bone engaging surfaces and including concave surface extending along said longitudinal axis between the first and the second end portions; and a second sidewall (A) arranged generally opposite the first sidewall and including a convex surface extending along the longitudinal axis between the first and second portions; as best seen in FIGS.2,3,6-8.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 217,218 are rejected under 35 U.S.C. 102(e) as being anticipated by Grooms et al. (7,048,765).

Grooms et al disclose a spinal implant comprising an elongate bone portion having a longitudinal axis or a system including a pair of spinal implants formed of bone (FIG.8) including or comprising a first end portion (FIG.8D) a second bone portion (FIG.8D) arranged generally opposite the first end portion; a first bone engaging surface (FIG.8D) and a second bone engaging surface (FIG.8D) arranged generally opposite the first bone engaging surface; a first sidewall (FIG.8D) extending between the first and second bone engaging surfaces and including concave surface extending along said longitudinal axis between the first and the second end portions; and a second sidewall (FIG.8D) arranged generally opposite the first sidewall and including a convex surface extending along the longitudinal axis between the first and second portions; as best seen in FIG.8.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 217,218 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bianchi et al. (6,033,438) in view of Stroeve et al. (5,728,159).

Bianchi et al disclose a spinal implant comprising an elongate bone portion having a longitudinal axis or a system including a pair of spinal implants formed of bone (FIGS. 8, 13, 16, 35) including or comprising a first end portion (FIGS. 8, 13, 16, 35) a second bone portion (FIGS. 8, 13, 16, 35) arranged generally opposite the first end

portion; a first bone engaging surface (FIGS. 8, 13, 16, 35) and a second bone engaging surface (FIGS. 8, 13, 16, 35) arranged generally opposite the first bone engaging surface; a first sidewall (FIGS. 8, 13, 16, 35) extending between the first and second bone engaging surfaces and including concave surface extending along said longitudinal axis between the first and the second end portions.

It is noted that Bianchi et al did not teach of a second sidewall arranged generally opposite the first sidewall and including a convex surface extending along the longitudinal axis between the first and second portions; as claimed by applicant. However, in a similar art, Stroeve et al evidences (FIGS.3, 4, 6, 7) the use of a spinal implant having convex surface opposite the concave surface to increase the stability of the implant during use.

Therefore, given the teaching of Stroeve et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Bianchi et al, as taught by Stroeve et al to increase the stability of the implant during use.

Response to Amendment

Applicant's arguments with respect to claims 63-216 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
July 2, 2007


PEDRO PHILOGENE
PRIMARY EXAMINER